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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,858	02/27/2004	Julio Casanova	SP-1785.IUS	8485
20875	7590	02/26/2010	EXAMINER	
MICHAEL C. POPHAL EVEREADY BATTERY COMPANY INC 25225 DETROIT ROAD P O BOX 450777 WESTLAKE, OH 44145			YU, MICKEY	
ART UNIT	PAPER NUMBER			
		3728		
MAIL DATE	DELIVERY MODE			
02/26/2010	PAPER			

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte JULIO CASANOVA*

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Appeal 2009-002030  
Application 10/789,858  
Technology Center 3700

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Decided: February 26, 2010

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Before MICHAEL W. O'NEILL, STEFAN STAICOVICI, and  
FRED A. SILVERBERG, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Julio Casanova (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-14, 19-34, and 39-41. Claims 15-18 and 35-38 have been withdrawn by the Examiner. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

## THE INVENTION

Appellant's invention relates to a battery package including at least two separate modules 12 and a cover 14 placed over the at least two separate modules 12. Spec. 3, para. [0021] and figs. 2 and 3.

Claim 1 is representative of the claimed invention and reads as follows:

1. A battery package comprising:

at least two separate modules, each module including a base having a first face and a second face, each module further including at least one pocket extending outwardly from the first face;

at least one battery placed into each pocket; and

a cover placed over the at least two separate modules;

two of the at least two separate modules have the first faces thereof facing each other, with at least one pocket of a first one of the two of the at least two separate modules being located between a pair of pockets of a second one of the two of the at least two separate modules;

wherein the at least two separate modules will easily separate upon removal of the cover from over the at least two separate modules; and

wherein none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules.

## THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Douglas	US 3,743,084	Jul. 3, 1973
Getz	US 5,957,358	Sep. 28, 1999
Källgren	US 6,253,920 B1	Jul. 3, 2001
Kumakura	US D479,126 S	Sep. 2, 2003
Casanova	WO 01/98170 A2	Dec. 27, 2001
Miller	WO 01/98171 A2	Dec. 27, 2001

The following rejections are before us for review:

1. The Examiner rejected claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
2. The Examiner rejected claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. The Examiner rejected claims 1, 3, 4, 6-11, 13, 14, 20, 22-24, 26-31, 33, 34, and 40 under 35 U.S.C. § 103(a) as unpatentable over Casanova, Douglas and/or Källgren.<sup>1</sup>

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<sup>1</sup> In the Final Rejection mailed Dec. 20, 2006, the Examiner inadvertently left out independent claim 22 from the heading of this rejection. Final Rejection, 3. However, the Examiner corrected this error in the Examiner's Answer. Ans. 3, 5. Since claims 23, 24, 26-31, 33, and 34, which are dependent on claim 22, were included in this rejection, and the Examiner explained to Appellant the error in the Interview Summary mailed Apr. 12, 2007, for the purpose of this appeal, we shall consider the Examiner's omission of claim 22 in the heading of this rejection as a typographical error. Accordingly, we will consider claim 22 as being part of this rejection and this appeal.

4. The Examiner rejected claims 2, 12, and 32 under 35 U.S.C. § 103(a) as unpatentable over Casanova, Douglas, and/or Källgren, and Official Notice.
5. The Examiner rejected claims 1, 3-5, 10, 11, 13, 14, 19, 20, 22-25, 30, 31, 33, 34, 39, and 40 under 35 U.S.C. § 103(a) as unpatentable over Kumakura, Douglas and/or Källgren.
6. The Examiner rejected claims 2, 12, and 32 under 35 U.S.C. § 103(a) as unpatentable over Kumakura, Douglas, and/or Källgren, and Official Notice.
7. The Examiner rejected claims 6-9 and 26-29 under 35 U.S.C. § 103(a) as unpatentable over Kumakura, Douglas, and/or Källgren, and Casanova.
8. The Examiner rejected claims 21 and 41 under 35 U.S.C. § 103(a) as unpatentable over Miller, Källgren, Getz, and Douglas.
9. The Examiner rejected claims 21 and 41 under 35 U.S.C. § 103(a) as unpatentable over Kumakura, Källgren, Getz, and Douglas.

#### THE ISSUES

1. Does the originally filed application support the limitation “none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules,” as called for by each of independent claims 1 and 22?
2. Does the limitation “none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules,” as recited in each of independent claims 1 and 22, render the claims indefinite under 35 U.S.C. § 112, second paragraph?

3. Does the Examiner's interpretation of Douglas's tablet holding insert 40, Källgren's blister pack 1, and Getz's battery packaging strip 40', as "separate modules," constitute a reasonable interpretation?

## SUMMARY OF DECISION

We REVERSE.

### OPINION

#### *Issue (I) – Rejection (I)*

We first consider the Examiner's rejection of claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Each of claims 1-14, 19, 20, 22-34, 39, and 40 requires the limitation "none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules." The Examiner takes the position that because the cardboard box 14 shown in Appellant's Figure 2 "has openings on both sides," it "allows removal of at least one of the modules." Ans. 4. Pointing to the Specification, Appellant argues that because the Specification states that, "the cover 14 covers all six sides of the engaged modules 12," the originally filed application supports the limitation "none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules." App. Br. 7. *See also*, Spec. 6, para [0027]. The Examiner responds that:

[T]he description on page 6 does not disclose whether the wrapping entirely covers all six sides or partially covers six sides of the modules.

Ans. 13.

To satisfy the written description requirement, the disclosure must convey with reasonable clarity to skilled artisans that Appellant was in possession of the claimed invention as of the filing date. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991). The inquiry into whether the description requirement is met is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, (CCPA 1976); *In re Ruschig*, 379 F.2d 990, 996 (CCPA 1967). In this case, we find that the Specification states that the cover 14 covers *all* six sides of the modules 12. *See* Spec. 6, para. [0027]. An ordinary and customary meaning of the term “all” is “the whole number, quantity, or amount; TOTALITY” MERRIAM-WEBSTER’S COLLEGiate DICTIONARY (10<sup>th</sup> Ed. 1997). Since *all* of the sides of the modules 12 are covered by cover 14, and the modules 12 have only six sides, we find that the Specification conveys with reasonable clarity to a person of ordinary skill in the art that the cover 14 totally covers the modules 12. Therefore, the rejection of claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, cannot be sustained.

#### *Issue (2) – Rejection (2)*

Next, we consider the Examiner’s rejection of claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 112, second paragraph, as being indefinite.

The Examiner takes the position that because the Specification does not “clearly states [sic] that all six sides of the modules are entirely covered” . . . “[i]t is not clear how the cover prevents the module from removal while the cover is over the modules.” Ans. 4 and 13.

However, it is well established that the test for definiteness under 35 U.S.C. § 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted). In this case, as we have found above, the Specification describes a cover 14 that covers *all* of the sides of the modules 12. *See* Spec. 6, para. [0027]. Since *all* of the sides of the modules 12 are covered by cover 14, and the modules have only six sides, we conclude that the claim language, when read in light of the Specification clearly describes that the cover 14 totally covers modules 12. Since the cover 14 totally covers modules 12, we conclude that the cover prevents removal of the modules 12 while the cover 14 covers the modules 12. Accordingly, we conclude that claims 1-14, 19, 20, 22-34, 39, and 40 are not indefinite under 35 U.S.C. § 112, second paragraph. Hence, the rejection of claims 1-14, 19, 20, 22-34, 39, and 40 cannot be sustained.

*Issue (3)*

*Rejection (3) through Rejection (9)*

The Examiner finds that neither Casanova, Kumakura, nor Miller discloses "separate modules," as required by each of independent claims 1, 21, 22, and 41. Ans. 5, 7, and 9. The Examiner relies on the teachings of Douglas, Källgren, and Getz to show packaging systems having "separate modules." As such, the Examiner takes the position that, the tablet holding insert 40 of Douglas, the blister pack 1 of Källgren, and the battery packaging strip 40' of Getz, constitute "separate modules." Specifically, the Examiner takes the position that, "the blister packs 2, 3 [of Källgren] are

separated at element 9 and are considered as two separate modules.” Ans. 16. Similarly, with respect to the teachings of Douglas, the Examiner states that, “[t]he Douglas patent has two modules 50,60 that meet the claim limitation of ‘separate modules.’” Ans. 29. Lastly, with regard to Getz, the Examiner notes that, “[e]ach of four or five batteries are considered a module.” Ans. 11.

When construing claim terminology in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). In this case, Appellant’s Specification does not expressly define the term “separate” or otherwise indicate that this term is used in a manner other than its ordinary and customary meaning. Accordingly, we construe this term in accordance with its ordinary and customary meaning. We find that an ordinary and customary meaning of the term “separate” that is most consistent with the Specification and the understanding of those of ordinary skill in the art is “set or kept apart: DETACHED.” MERRIAM-WEBSTER’S COLLEGiate DICTIONARY (10<sup>th</sup> Ed. 1997).

It is our finding that the holding units 50 and 60 of the tablet holding insert 40 of Douglas are connected (attached) by linking panel 42. Douglas, col. 4, ll. 19-21 and figs. 1 and 2. Similarly, we find that the rows 2 and 3 of Källgren’s blister pack 1 are connected by web 9 and the battery packages 40’ of Getz are connected along perforation line 50. Källgren, fig. 1 and Getz, fig. 2. Hence, in contrast to the Examiner’s position, we find that the tablet holding insert 40 of Douglas, the blister pack 1 of Källgren, and the

battery packaging strip 40' of Getz, do not constitute "separate modules," because they are each connected (attached) rather than detached or separate, as called for by each of independent claims 1, 21, 22, and 41. Accordingly, since the Examiner has erred in the interpretation of the disclosures of Douglas, Källgren, and Getz, respectively, the Examiner's conclusion of obviousness based on the teachings of Casanova, Douglas and/or Källgren; Kumakura, Douglas and/or Källgren; Miller, Källgren, Getz, and Douglas; and Kumakura, Källgren, Getz, and Douglas is likewise flawed. Therefore, Rejections (3), (5), (8), and (9) cannot be sustained.

With respect to Rejections (4) and (6), the Examiner's proposed modification based on Official Notice does not cure the deficiencies of Douglas and Källgren as discussed above. Accordingly, Rejections (4) and (6) likewise cannot be sustained.

Finally, regarding Rejection (7), the Examiner's proposed modification based on the disclosure of Casanova does not cure the deficiencies of Douglas and Källgren as discussed above. Accordingly, Rejection (7) also cannot be sustained.

## CONCLUSIONS

1. The originally filed application supports the limitation "none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules," as called for by each of independent claims 1 and 22.
2. The limitation "none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate

modules," as recited in each of independent claims 1 and 22, does not render the claims indefinite under 35 U.S.C. § 112, second paragraph.

3. The Examiner's interpretation, of Douglas's tablet holding insert 40, Källgren's blister pack 1, and Getz's battery packaging strip 40', as "separate modules," is not a reasonable interpretation.

## DECISION

The Examiner's decision to reject claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement, is reversed.

The Examiner's decision to reject claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 112, second paragraph, as being indefinite, is reversed.

The Examiner's decision to reject claims 1-14, 19, 20, 22-34, 39, and 40 under 35 U.S.C. § 103(a) is reversed.

## REVERSED

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